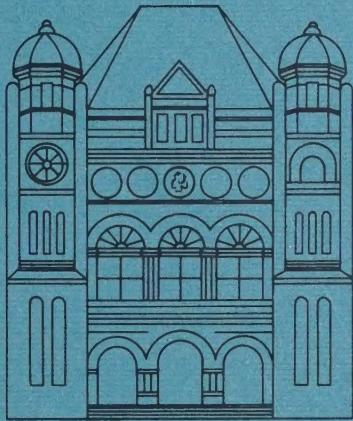


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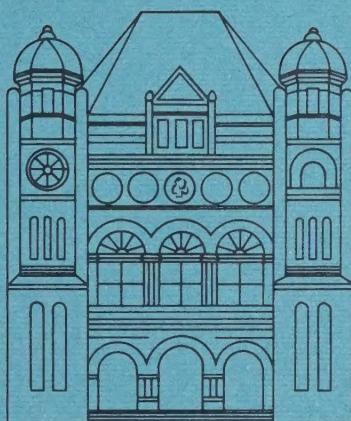
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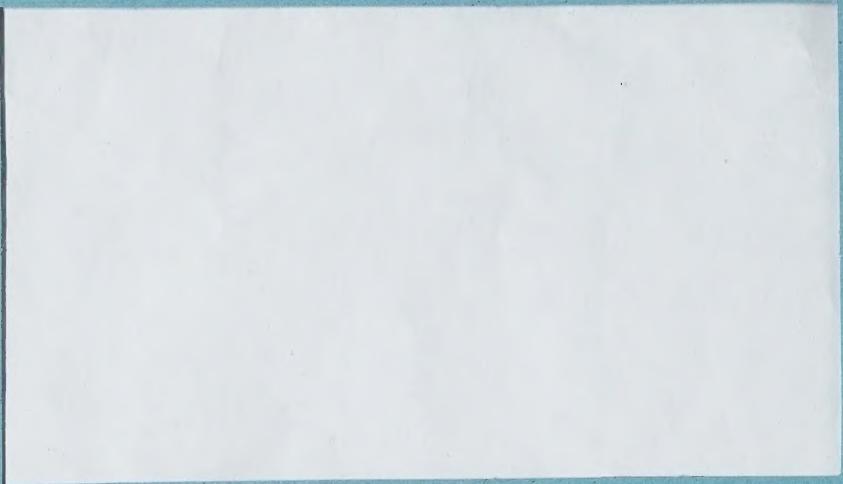
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## INTERPROVINCIAL TRADE BARRIERS AND CONSTITUTIONAL REFORM

*Current Issue Paper 130*

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## INTRODUCTION

Interprovincial trade barriers have existed in Canada throughout its history and have always been a sensitive political issue among the nation's elected leaders. Although tariff barriers are prohibited under the *Constitution Act, 1867*, the free movement of goods, services and individuals across the country has been inhibited by a variety of non-tariff barriers that have created a highly protectionist internal economic system.<sup>1</sup>

The most common forms of non-tariff barriers in Canadian provinces include:

- government procurement policies (provincial governments often pay up to a 10 percent premium for goods produced in their own province);
- marketing agreements (e.g. agricultural marketing boards);<sup>2</sup>
- subsidies;
- industrial incentives;
- labour mobility restrictions (e.g. professional and union requirements, pension portability);<sup>3</sup>
- transportation regulations;<sup>4</sup> and
- technical standards (e.g. product labelling, health and safety regulations).<sup>5</sup>

These restrictions may emerge from natural barriers such as distance or language, or they may be based on federal and provincial policies that support local enterprises. Whatever their origins, interprovincial trade barriers have had a major influence on Canada's economic development and have been a controversial issue during recent rounds of constitutional negotiations. These constitutional talks have provided a forum through which provincial premiers and the federal government have been working toward eliminating restrictive trade practices in order to improve the nation's international competitiveness and reduce the domestic costs trade barriers impose on the Canadian economy.

Readers interested in additional information on this topic may wish to refer to a 1990 Current Issue Paper (#99) by David Rampersad entitled *Interprovincial Trade Barriers*.

## INTERPROVINCIAL TRADE IN CANADA

Interprovincial trade in Canada is massive in scale. The approximately \$90 billion in goods traded during 1988 represents a 16 percent (current dollar) increase from 1984 trade results<sup>6</sup> and accounts for approximately one-quarter of the nation's goods production. These figures do not include interprovincial trade in services which represented over 40 percent of all interprovincial trade in 1984 (latest data available).<sup>7</sup> In terms of employment, interprovincial trade was responsible for approximately two million direct Canadian jobs in 1990.<sup>8</sup>

The significance of Canadian interprovincial trade varies among different parts of the country. Interprovincial exports represented a relatively small portion of the 1988 shipments from B.C., Newfoundland and Ontario, while representing a significantly higher share of trade for Alberta, Manitoba, and to a lesser extent Quebec. The Atlantic provinces, Manitoba, Saskatchewan and the territories were the largest importers of goods from other provinces (primarily central Canada).

Ontario and Quebec were each others largest trading partner in 1988 with 15 percent of Quebec's shipments transferred to Ontario and 8 percent of Ontario's shipments flowing to Quebec. The value of these trade figures in dollar terms are roughly equivalent (\$14 to \$15 billion) since Ontario's domestic goods production was more than twice the size of Quebec's.<sup>9</sup>

## INTERPROVINCIAL TRADE AND THE CANADIAN CONSTITUTION

Important aspects of the Canadian constitution relating to regulating the national economy and the integration of the economic union are found within sections 91, 92, 92A, and 121 of the *Constitution Act, 1867* and sections 6 and 36 of the *Constitution*

*Act, 1982.* These sections set out the exclusive economic powers of Parliament and may directly or indirectly affect interprovincial trade. Federal economic powers include jurisdiction in the following areas:

- public debt and property;
- regulation of trade and commerce;
- raising of money by any mode or system of taxation;
- borrowing money on public credit;
- navigation and shipping;
- currency and coinage;
- banking, incorporation of banks and issue of paper money, etc., including savings banks, bills of exchange and promissory notes, interest, legal tender, bankruptcy and insolvency;
- weights and measures; and
- patents and copyrights.<sup>10</sup>

The *Constitution Act* also identifies the exclusive powers of provincial legislatures. Provincial powers have tended to evolve from basic principles allowing provinces to handle matters of a "local or private nature" and concerns related to property and civil rights.<sup>11</sup> The following list provides a brief description of exclusive provincial powers in the economic sphere including some areas which may directly or indirectly affect interprovincial trade:

- direct taxation within the province to raise revenue for provincial purposes;
- management and sale of public lands belonging to the province, and of timber on such land;
- various liquor, restaurant, retail and auction licences to raise revenue for provincial or municipal purposes;
- public works within the province respecting railways, canals, telegraph lines, highways, etc (the construction and maintenance of highways and roads within the province falls under the two general principles mentioned above and provisions for public works);<sup>12</sup>

- property rights within the province;
- laws relating to exploration, development, conservation and management of non-renewable resources in the province, and to development, conservation and management of electrical power facilities;
- laws relating to export from the province to other parts of Canada of primary renewable resources and forestry resources, and of electrical power, providing there is no discrimination in prices or supply; and
- laws to raise money by taxation of above resources and electrical power, provided taxation does not differentiate between exported production and non-exported production.<sup>13</sup>

Under provincial laws, all produce and manufactured goods can pass freely from one province to any other (this has been interpreted to refer only to interprovincial tariff barriers) and all Canadian citizens and permanent residents can live and work in any province, subject to provincial laws and practices that do not discriminate against people from other provinces (excluding reasonable residency requirements for the receipt of public social services). This does not limit a government's right to implement any law, program or activity aiming to improve conditions of the disadvantaged in a province where the rate of employment is lower than the national employment rate. For example, a law forcing a particular industry to abide by a provincial employment preference for local residents might be permissible even though it discriminates against people from other provinces.<sup>14</sup>

The federal parliament and provincial legislatures are also committed by the *Constitution Act, 1982* to promoting equal opportunities for the well-being of Canadians, furthering economic development to reduce disparities in opportunities, and providing essential services of reasonable quality to all Canadians.<sup>15</sup>

## THE IMPACT OF TRADE BARRIERS

Although no Canadian government has developed a comprehensive list of interprovincial trade barriers, the Canadian Manufacturers' Association estimates that more than 500 barriers exist and that they cost consumers over \$6 billion annually to maintain.<sup>16</sup> Interprovincial trade barriers have been a long-standing problem in the

Canadian federation and have been the focus of considerable public scrutiny since at least 1940, when the issue was highlighted in the federal Rowell-Sirois Commission report.

The interprovincial trade issue was revisited in 1985 by the *Royal Commission on the Economic Union and Development Prospects for Canada* (Macdonald Commission). The Commission proposed establishing a national Code of Economic Conduct to spell out policies that would strengthen the economic union, and a federal-provincial Council of Ministers for Economic Development to implement it. As part of this project, provincial governments would be asked to justify existing barriers, and then each barrier would be considered in this context. The Commission did not see major reform to the Constitution or national institutions as the way to achieve such change. Since then, several academics and business groups have called for the reduction or elimination of interprovincial barriers in an effort to make Canadian industry more efficient and globally competitive.<sup>17</sup>

Interprovincial trade barriers have been viewed with increasing scepticism during the current recession, especially due to concerns related to Canada's declining competitiveness. Domestic trade barriers also contradict the trend towards trade barrier reductions among other leading countries (e.g. integration of the European Community) and have been increasingly problematic in negotiations related to the General Agreement on Tariffs and Trade (GATT) and the North American Free Trade Agreement.<sup>18</sup> As Ralph Hedlin's recent commentary in *Alberta Report* stated, "the fact that there are more constraints on the movement of capital, people and goods between the provinces in Canada than there are between the countries of the European Community discredits every province."<sup>19</sup>

International trade agreements, such as the GATT and the Canada-U.S. Free Trade Agreement (FTA), have already obliged the federal government to change discriminatory practices in its jurisdiction; for example, to comply with both GATT and the FTA, it must allow non-Canadian suppliers to bid on most federal government contracts above a certain value. Economic changes related to the GATT, FTA, and

NAFTA are pressuring provincial governments to dismantle existing domestic trade barriers as well.

Nonetheless, Canada's provincial governments have not eliminated discriminatory trade practices. As the Macdonald Commission indicated, "the barriers that exist are often justified in the name of important values . . . Important economic, social and cultural goals may justify government intervention that directly and indirectly affect the free movement of factors."<sup>20</sup> Diverse factors such as the following can shape provincial policy and programs on interprovincial trade:

- governments may be faced with short-run economic considerations or social concerns (e.g. local unemployment);
- governments may consider the concerns of vested interests to be a higher political priority than costs inflicted on consumers;
- trade barriers may be erected in response to market distortions or to counter barriers in other jurisdictions; and
- barriers are often erected to protect "key" industries or promote economic development. The definition of a key industry may range from a firm in its infant stage to a sunset company.<sup>21</sup>

The various arguments used to justify interprovincial trade barriers can fail to take account of their disruptive effects. Non-tariff barriers force economic decision-makers to consider factors that do not ensure the maximum use of capital and may inhibit productivity gains made through specialization and mass production. These negative aspects of non-tariff barriers adversely affect the economies of all Canadian provinces. For example, Ontario's industries are prevented from competing nationally in a variety of areas including government procurement. Barriers erected by Ontario, on the other hand, deprive its population of free access to goods and services outside its borders that might be cheaper or higher in quality<sup>22</sup> (e.g. failed Saskatchewan bid to install high pressure boilers in the Skydome).<sup>23</sup>

## RECOMMENDATIONS TO REDUCE DOMESTIC BARRIERS TO TRADE IN RECENT CONSTITUTIONAL DEBATES

The demise of the Meech Lake accord led to a period of intense constitutional discussion on the future of the country. One recurring theme of this debate was the structure of the economic union.

The *Meech Lake Constitutional Accord, 1987* addressed the issue in a limited manner by supporting the concept of entrenching annual First Ministers' meetings on the state of the Canadian economy into the constitution. Since the failure of the Meech Lake Accord, however, pressures to radically alter Canada's domestic trading relationships have been building and have been the catalyst behind proposals from a variety of Canadian governments and independent bodies to substantially alter the nation's interprovincial trading system. This section reviews what the key reports and proposals had to say on interprovincial trade barriers and the economic union.<sup>24</sup>

### National Level

#### Spicer Commission Report, June 1991

The Spicer Commission was set up by the federal government in November 1990 to elicit the views of the Canadian public on the future of the country. It found considerable public concern about the state of the Canadian economy. The Commission argued that:

- The federal government should place high priority in working with other governments to produce more efficiency by eliminating overlapping jurisdictions.
- Federal and provincial governments must clarify the effect of various market forces in the Canadian economy and the role governments will play in the face of such economic change. These forces include the privatization of public sector enterprises, deregulation, and free trade. They seem to promise greater economic dislocation, and threaten key values such as universal social programs.
- Government, industry, labour and small businesses must work to make Canada more competitive in the face of global market pressures.

Shaping Canada's Future Together: Proposals, September 1991

In September 1991 the federal government released its proposals for constitutional reform. The federal proposals included the following provisions designed to strengthen Canada's economic union:

- entrench in the Constitution the four so-called economic freedoms (free flow of persons, goods, services and capital), effective July 1, 1995;
- provide Parliament with the constitutional authority to make laws affecting the efficient functioning of the economic union, subject to a specified degree of provincial approval and with provisions for opting out by dissenting provinces;
- the federal government, with provincial consultation, will develop guidelines to improve coordination of fiscal policies and their harmonization with Canada's monetary policy, with the same approval and opting-out provisions as above;
- the federal government proposes to clearly define the Bank of Canada's mandate and to consult provincial and territorial governments on appointments to the Board and regional panels;
- the proposals also include the entrenchment of a Council of the Federation, composed of federal, provincial and territorial representatives, to decide on issues relating to intergovernmental coordination and harmonization of fiscal policy, and use of the federal spending power.

Beaudoin-Dobbie Committee, March 1992

The Joint Committee on a Renewed Canada (Beaudoin-Dobbie Committee), a Parliamentary committee comprised of 11 Senators and 21 MPs, held extensive public consultations in late 1991 and early 1992. It made the following recommendations:

- Section 121 of the *Constitution Act, 1867* should be replaced with a new section establishing Canada as an economic union. This new section would:
  - not permit government prohibitions or restrictions on the movement of goods, services, persons and capital if such measures impeded the efficient functioning of the economic union, or constituted arbitrary

- discrimination or disguised restrictions on trade across provincial or territorial boundaries;
- contain exceptions to the above, to respond to concerns about provincial monopolies, generally available subsidies and tax-based schemes to encourage investment; and
  - require governments to seek agreement on equivalent national standards to enhance the mobility and well-being of Canadians.
- A mechanism to resolve disputes arising from this new section should be chosen and set up. The mechanism should comprise three steps:
    - a review mechanism to determine whether a complaint presents a *prima facie* case;
    - a conciliation mechanism to attempt to reach a negotiated settlement; and
    - a trade tribunal to make a final, binding decision, should conciliation fail.
  - The *Constitution Act, 1982* should be amended by adding a new s. 36.2, which would commit governments to:
    - work cooperatively to strengthen the economic union;
    - ensure the mobility of persons, goods, services and capital;
    - pursue the goal of full employment; and
    - ensure all Canadians have a reasonable standard of living.
  - The mandate of the Bank of Canada should not be part of the constitutional discussion. However, the federal government should proceed with its proposal to consult provincial and territorial governments regarding appointments to the Bank's board of directors and the establishment of regional consultative panels.
  - An annual conference of First Ministers dealing primarily with economic and social matters, but also with any other issues the First Ministers wish to discuss, should be entrenched in the Constitution.

## Ontario

*A Canadian Social Charter: Making Our Shared Values Stronger, A Discussion Paper* (September 1991) introduced the notion of a social charter and linked it to the issue of economic unity:

- The Constitution should include a Social Charter, which would serve as a guide to governments as they develop and strengthen the social contract. It would include a statement of the values and principles that Canadians wish to affirm and that should guide social policy. Such national standards would help harmonize access to social services across Canada, thereby strengthening mobility rights within the economic union.

The 12 member, all-party Select Committee on Ontario in Confederation consulted widely across the province and country over a 13 month period. The *Final Report of the Select Committee on Ontario in Confederation* was released in February 1992 and included the following comments on the economic unity issue:

- Efforts to reduce trade and other economic barriers within Canada are supported in principle.
- The government of Ontario, in concert with other provinces and the federal government, should study further the details of the federal proposals regarding the economic union, seeking to clarify, negotiate and implement some of these measures through sub-constitutional means.

## Other Provinces

The following section provides a brief overview of the economic unity positions contained in reports by government appointed commissions or legislative committees in several jurisdictions outside of Ontario.

### Quebec - Allaire Commission Report, January 1991

The *Report of the Constitutional Committee of the Québec Liberal Party* (Allaire Commission Report, January 1991) provided a detailed expression of Quebec's constitutional position after the collapse of the Meech Lake Accord, and represented

(with some minor amendments) the view of Quebec's ruling party. The commission of 17 Liberal Party members supported the following guidelines to strengthen the Canadian economic union:

- free mobility of goods, people and capital;
- maintain customs and monetary union;
- restore balance to Canadian public finances by reducing the size of the central state and imposing limitations on its budgetary practices, including setting specific targets to limit deficits and curtail taxation power; and
- reform the Bank of Canada to ensure regional representation and independence.

Quebec - Bélanger-Campeau Commission Report, March 1991

The *Report of the Commission on the Political and Constitutional Future of Quebec* (the Bélanger-Campeau Commission Report) of March 1991 was another major Quebec document on the constitutional question. The 36 member commission was composed 18 MNAs representing the Quebec government and two opposition parties and 18 representatives of other key sectors. In general, the Commission report provided a less optimistic approach to constitutional reform than the Allaire Report. Commission members did not make extensive proposals related to economic issues and simply recommended establishing a National Assembly commission to study any proposals for economic partnership from Canada.

Manitoba Task Force Report, October 1991

The Manitoba Constitutional Task Force was established in November 1990 and was composed of six MLAs and one private citizen. Its final report indicated that the Manitoba government should work towards the elimination of interprovincial economic barriers.

New Brunswick Commission, January 1992

This nine member commission of legislators and private citizens had been set up in September 1990 and made the following recommendations:

- The economic union of Canada should be strengthened by amending s. 121 of the Constitution so that the federal and provincial governments are obliged to ensure the free movement of goods, services, people and capital within Canada.
- The federal government should, in partnership with the provinces, exercise its responsibility to improve the national economic infrastructure that is essential to an integrated, prosperous and competitive economic union.
- The transition to a stronger economic union, via a modernized s. 121, should be accompanied by a plan for managing the social and economic adjustment costs arising from an enhanced union.
- The federal and provincial governments should commit themselves to develop proposals to harmonize their fiscal and economic policies. These proposals should provide for the effective implementation of federal-provincial agreements in these areas.
- The federal and provincial governments should jointly create an economic development regime that would foster the identification of shared priorities to be pursued through a rationalized system of program delivery.

Alberta Select Special Committee, March 1992

The all-party Alberta Select Committee on Constitutional Reform had held public hearings in 1991 and released its final report in March 1992. The following measures to foster greater intergovernmental cooperation in managing the economy were supported:

- Annual First Ministers' Conferences on the economy should be entrenched in the Constitution, to take place in the pre-budget phase of the planning cycle.
- The Constitution should confirm the legitimate role of provinces in international trade negotiations in areas directly affecting matters of exclusive provincial jurisdiction.

- As a sub-constitutional matter, all governments must cooperate to eliminate trade barriers within the country. Further development of interprovincial and federal-provincial mechanisms to eliminate these barriers is encouraged.

Nova Scotia Working Committee, November 1991

This non-legislative committee was composed of 12 members of the public and chaired by Eric Kierans, a former federal and provincial (Quebec) cabinet minister. The committee held public meetings and made the following recommendations in its November 1991 final report:

- Constitutional change should do nothing to weaken the federal government's ability to be a leading force in the economic, social and cultural development of the country. In particular, it should be able to:
  - maintain national unity;
  - strengthen the economy;
  - set national standards;
  - achieve social equality; and
  - redistribute the prosperity of Canadians.
- More specifically, there should be no erosion of the federal government's current role in providing national economic and social programs, with national objectives and standards.
- The policy of equalization and efforts to reduce regional economic disparities should be intensified. At the very least, this means strengthening s. 36 of the *Constitution Act, 1982* to make government obligations firmer.
- Governments should promote long-term, sustainable economic growth in Nova Scotia.

### **Non-Governmental Reports**

The process of developing proposals on the economic dimensions of Canadian constitutional reform has not been confined solely to governmental or legislative bodies. For example, in June 1991 an informal group of 22 prominent Canadians published a paper entitled *Some Practical Suggestions for Canada: Report of the*

*Group of 22.* The group wanted the following economic provisions included in any reformed constitutional package.

- Commitment to four economic freedoms (free movement of people, goods, services and capital), with consideration given to an administrative tribunal to implement and resolve disputes between provinces.
- Economic regulation and development.
  - Broader interpretation of federal powers in trade and commerce. Responsibility for international treaties would remain federal, but with arrangements for provincial involvement when their interests are at stake.
  - Regulation of competition should remain a federal power.
  - Securities markets should be federally regulated.
  - Mutual recognition by all provinces of financial regulations to ensure free flow of capital.
  - Interprovincial and international transportation should be regulated federally, and intraprovincial transportation regulated provincially. Free flow of goods should be protected by a mechanism established to oversee the economic union.
  - Sea coast and inland fisheries should be a shared jurisdiction on similar basis as transportation.
  - Energy and natural resources should be in provincial jurisdiction, with international and military issues to be in federal jurisdiction. Territories should be given the same responsibilities as provinces in energy field.
  - Responsibility for patents and copyright, subsumed under new field known as "intellectual property," should be included in federal jurisdiction.
  - Responsibility for regional economic expansion should be vested in the provinces, with continuing federal responsibility to address disparities.
  - Training should be a field of provincial jurisdiction but with concurrent federal authority in order to develop national standards to preserve mobility and to meet demands of international compatibility.
  - Research and development should be a concurrent responsibility.

Another non-governmental publication of note was a joint constitutional paper by academics from York University and the University of Toronto entitled *An Agenda for Constitutional Reform: Final Report of the York University Constitutional Reform Project*. The January 1992 report took the following approach to the economic unity issue.

- The federal proposals to strengthen the Canadian economic union are supported. However, any attempt to so strengthen the economic union should also deal with strengthening the Canadian social union.
- A new power should be created to declare matters necessary for the efficient functioning of the economic union. However, the focus of this new power should be a reformed Senate and a Federal-Provincial Commission on the Canadian Economic Union, rather than the proposed Council of the Federation.
- A Federal-Provincial Commission on the Canadian Economic Union should be created. Its members would be appointed by the federal and provincial governments and ratified by the reformed Senate. This body would
  - receive complaints from governments, citizens and corporations;
  - develop a comprehensive catalogue of potential internal trade barriers;
  - undertake quantitative assessments of the magnitude of the social costs associated with these barriers;
  - hold public hearings where policy responses might be canvassed; and
  - make recommendations to the Senate in the form of proposed directives.
- The proposed directives on the economic union, after being ratified by a two-thirds majority vote in the Senate, would be binding on both levels of government. However, individual provinces could opt out of these directives in a manner similar to the current opt-out provision in s. 33.
- Section 121 of the *Constitution Act, 1867* should be expanded to prohibit interprovincial discrimination against persons, services and capital. The issue of subsidies should be dealt with through a separate subsidies code, rather than through s. 121.
- In interpreting s. 121, the courts should be instructed to take into account the directives proposed by the Federal-Provincial Commission. Judicial enforcement of s. 121 should be delayed for three years to provide the

Commission and Senate time to develop a body of directives that would inform judicial interpretation.

## INTERNAL TRADE BARRIERS AND RECENT CONSTITUTIONAL PROPOSALS

### **July Proposals**

The federal government has been pressing provincial leaders to include some form of binding agreement for interprovincial "free trade" in any new constitutional deal. Despite this pressure, the nine premiers involved in the July 1992 unity discussions rejected federal proposals to include the objective of eliminating all trade barriers by 1995, and the means to achieve this goal, within any new constitutional package.<sup>25</sup>

The unity proposal, however, did include provisions to establish a binding trade disputes panel for the provinces and to phase out most of the existing 500 trade barriers by July 1, 1996.<sup>26</sup> Section 121 of the constitution would be revised to prohibit provinces or territories from creating a law that "unduly impedes the efficient functioning of the Canadian economic union; or imposing measures that discriminate against other provinces."<sup>27</sup> Not surprisingly, the Canadian premiers included a long list of exemptions in their unity plan. Exemptions included:

- regional development programs;
- provincial farm marketing boards;
- consumer protection programs;
- welfare and social services;
- existing provincial monopolies (e.g. Ontario Hydro);<sup>28</sup>
- subsidies or tax incentive programs to encourage investment; and
- land purchases.<sup>29</sup>

Public reaction to the premiers' trade plan was mixed. In the opinion of the editorial staff of the *Financial Post*:

The premiers' unity package is seriously flawed because it does little to remove the damaging interprovincial trade barriers affecting Canada. The price is two-fold: Consumers overpay for goods and services from . . . protected industries and workers employed in protected enterprises are doomed as tariffs worldwide drop, thus exposing them to real competition from considerably more efficient rivals. The pact is not all bad. At least the premiers call for a special tribunal to adjudicate trade disputes among provinces. Unfortunately, the rest of the package totally guts the intent of removing barriers by allowing government subsidies . . . to continue unimpeded.<sup>30</sup>

On a more positive note, the pact would eliminate a variety of barriers including restrictions on the movement of professional and blue collar labour, and barriers affecting the tendering of provincial government contracts.<sup>31</sup>

### **Charlottetown Accord**

The August 1992 *Consensus Report On the Constitution* ("Charlottetown Accord") sets out the economic policy objectives that Canada's First Ministers have agreed to include in the Canadian constitution. The First Ministers support:

- working together to strengthen the Canadian economic union;
- the free movement of persons, goods, services and capital;
- the goal of full employment;
- ensuring that all Canadians have a reasonable standard of living; and
- ensuring sustainable and equitable development.

Related political accords that accompany the Consensus Report indicate that Canada's First Ministers are expected to review the following principles for the establishment of a domestic Common Market at a future First Ministers' Conference.

- Canada is a social and economic union within which, to the extent provided below, persons, goods, services, and capital may move freely across provincial and territorial boundaries.
- The Parliament and Government of Canada, the provincial legislatures and governments and territorial legislative authorities and governments shall not erect interprovincial trade barriers by law or practice that
  - arbitrarily discriminate on the basis of province or territory of residence, origin or destination, and
  - impede the functioning of the Canadian economic union (several exceptions - e.g. laws or practices that support equalization or regional development).

These principles would not invalidate laws or practices in areas including public safety, the provision of social services, the maintenance of monopolies, labour practices, "reasonable" public sector investment practices, and the management of natural resources, as long as these laws did not create a disguised restriction on trade.

The Consensus Report's political accords also give First Ministers the authority to set up an independent dispute resolution agency at a later date and decide on its role, mandate and composition. The proposed activities for this agency include mediation, screening, final determination, and binding dispute resolution functions.

The reaction of business interests to the Charlottetown Accord's economic union proposals has tended to closely resemble that to similar proposals in the July 1992 unity deal. Critics have complained that the provincial commitment to support the free flow of goods, services, capital, and people across the country is weak since violations are non-justiciable (an alleged violation cannot be taken to the courts). They also argue that the Charlottetown Accord's economic proposals contain all kinds of exemptions that, for example, allow preferential treatment for local firms in government procurement and the maintenance of marketing boards and investment barriers as a whole.<sup>32</sup> The Business Council on National Issues, the Canadian Chamber of Commerce, and the Canadian Manufacturers' Association have all

indicated that they are disappointed with the Accord's exemption list and its "lack of precise reference to the removal of trade barriers."<sup>33</sup>

## CONCLUSION

Political compromises obviously played a major role in shaping the trade provisions of the Charlottetown Accord and may lead to additional revisions if future negotiations are conducted to clarify its Common Market provisions. It is hardly surprising that federal efforts to eliminate internal trade barriers faced resistance since provincial premiers represent jurisdictions that may not be equally able to profit from changes in the domestic terms of trade. The reality of foreign competitive pressures, however, appears to have convinced most premiers that a reduction in barriers to interprovincial trade will improve the long-term competitiveness of their individual provinces and the nation as a whole.

## FOOTNOTES

<sup>1</sup> David Rampersad, *Interprovincial Trade Barriers*, Current Issue Paper No. 99 (Toronto: Legislative Research Service, Legislative Library, 1990), pp. 2-6.

<sup>2</sup> "Canada's Interprovincial Trade Barriers Hamper Competitiveness," *Econoscope* 16:1 (February 1992): 7.

<sup>3</sup> "Interprovincial Barriers to Trade and Shared Infrastructure: Two Aspects of Atlantic Economic Integration," *Atlantic Report* 26:2 (July 1991): 3.

<sup>4</sup> Rampersad, *Trade Barriers*, p. 2.

<sup>5</sup> "Barriers Hamper Competitiveness," p. 7.

<sup>6</sup> Canada, Statistics Canada, *The Daily*, Cat. no. 11-001E (Ottawa: Supply and Services Canada, 29 April 1992), p. 2.

<sup>7</sup> Telephone interview with Hans Messinger, Manager of Interprovincial Trade Project, Statistics Canada, Ottawa, 1 October 1992.

<sup>8</sup> Ralph Hedlin "We Should Support Ottawa's Economic Reforms," *Alberta Report*, 7 October 1991, p. 11.

<sup>9</sup> Canada, Statistics Canada, *The Daily*, p. 2.

<sup>10</sup> Ted Wakefield, *A Comparative Summary Of Key Constitutional Documents, Reports and Proposals*, Current Issue Paper No. 122 (Toronto: Legislative Research Service, Legislative Library, 1992), p. 48.

<sup>11</sup> Garth Stevenson, "The Division Of Powers," in Olling and Westmacott, eds., *Perspectives In Canadian Federalism* (Toronto: Prentice-Hall Canada Inc., 1988), p. 43.

<sup>12</sup> Telephone interview with Michel Hélee, Constitutional Information Coordinator, Constitutional Law Division, Ontario Ministry of the Attorney General, Toronto, 1 October 1992.

<sup>13</sup> Wakefield, *Reports and Proposals*, pp. 48-49.

<sup>14</sup> Alison Drummond et al., *A Primer For Current Constitutional Debates*, Current Issue Paper No. 123 (Toronto: Legislative Research Service, Legislative Library, 1992), p. 13.

<sup>15</sup> Wakefield, *Reports and Proposals*, p. 49.

<sup>16</sup> "Canada 1993: A Plan For The Creation Of A Single Economic Market In Canada," (Toronto: The Canadian Manufacturers' Association, 1991), p. 1.

<sup>17</sup> Drummond et al., *Constitutional Debates*, p. 14.

<sup>18</sup> Hedlin, "Ottawa's Economic Reforms," p. 11.

<sup>19</sup> Ibid.

<sup>20</sup> Canada, Royal Commission on the Economic Union and Development Prospects for Canada, *Report*, vol. III (Ottawa: Supply and Services Canada, 1985), pp. 135-136.

<sup>21</sup> "Barriers to Trade," p. 3.

<sup>22</sup> Rampersad, *Trade Barriers*, p. 2.

<sup>23</sup> "Canada 1993," p. 7.

<sup>24</sup> Wakefield, *Reports and Proposals*, pp. 48-61.

<sup>25</sup> Patricia Lush, "Wilson Wants Free Trade In the Constitution," *Globe and Mail*, 5 June 1992.

<sup>26</sup> Peter Morton, "Unity Deal Cuts Trade Barriers," *Financial Post*, 9 July 1992.

<sup>27</sup> Ibid.

<sup>28</sup> Ibid.

<sup>29</sup> "Pact Does Little To Help Economy," *Financial Post*, 14 July 1992, p. 10.

<sup>30</sup> "Pact Does Little," p. 10.

<sup>31</sup> Morton, "Unity Deal Cuts Barriers."

<sup>32</sup> Shawn McCarthy, "Business Disappointed With Failure Of Economic Union," *Toronto Star*, 30 August 1992; Michael Bliss, "The Unity Deal: All The Flaws Of Meech - And More," *Toronto Star*, 3 September 1992.

<sup>33</sup> Ross Howard, "Ad Campaign Misleading, No Side Says," *Globe and Mail*, 2 October 1992, p. A6.









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